

Utah WIC Policy and Procedures Manual

Section G: Ineligibility

G. INELIGIBILITY

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G.1. Ineligibility and Termination

Policy

Persons ineligible for the program must be notified in writing of their ineligibility, of the reasons for the ineligibility and of the right to a fair hearing. (7 CFR 246.7 j. (5)).

Procedure

- I. Ineligible at the time of application
 - a. Applicants who initially apply for the WIC Program but do not meet all three of the criteria for eligibility (residency, income, and nutritional risk) are ineligible to receive WIC benefits.
 - b. Ineligible applicants must be issued a Letter of Ineligibility.
 - c. An ineligible file must be kept for all applicants who are found to be ineligible for the program. A new file should be made for each fiscal year (October 1 to September 30). A fully completed copy of the Letter of Ineligibility must be placed in the ineligible file.
- II. Ineligible (terminated) during a certification period
 - a. Participants may be terminated during their certification period for the following reasons:
 - i. Family is now over income
 - ii. Participant violations
 - iii. Participant requests termination
 - iv. Categorical ineligibility; such as if a woman discontinues breastfeeding her baby who is between six (6) and twelve (12) months of age.
 - b. Participants terminated during a certification period are entitled to a minimum of 15 days notification of termination. Notification is accomplished through the issuance of the Letter of Ineligibility.
 - c. Participants are eligible for benefits during the notification period. (See section C.8. regarding voucher issuance during the notification period).
 - d. Failure to surrender vouchers or redemption of vouchers beyond the notification period should be treated as a participant violation. Failure to inform the clinic that they have stopped breastfeeding within 30 days should also be treated as a participant violation. (See section G.6)

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III. Letter of Ineligibility

- a. The Letter of Ineligibility must be used to notify participants of their ineligibility and/or termination from the program.
- b. The Letter of Ineligibility is issued on the current pre-printed State form.
- c. The letter must contain the reason(s) for the ineligibility and information on the right to a fair hearing. (The Fair Hearing Form is found at the end of this section.)
- d. For those persons found ineligible at the time of application, the original letter must be issued to the applicant and a copy placed in the ineligible file.
- e. For participants who are terminated during ~~or at the end of~~ a certification period, the original letter is issued to the applicant and a copy placed in the terminated participant's file.

V. Termination Files

- a. Charts must be kept on all participants terminated from the WIC program.
- b. Terminated charts must be filed by Federal fiscal year (Oct. 1 - Sept. 30).
- c. Refer to Section L.8 for information on retention of files.

G.2. Notification of Expiring Certification

Policy

Participants must be notified that their certification period is about to expire.

Procedure

- I. Participants must be notified at least fifteen (15) days prior to actual expiration, but not earlier than two (2) months before expiration.
- II. In the **WICNU** system, notification is accomplished one of two ways:
 - a. A statement is printed on the participant's last voucher of each month that lists the participant's certification expiration date.

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- b. For any certified participants who do not receive vouchers, a letter is mailed or a phone call is made notifying the participant or the guardian of the certification expiration date.
 - i. The Expiring Certifications report is run and printed through the WICNU Mailing Register.
 - ii. Clinic staff documents on the report either:
 - 1. The date a letter was mailed, or
 - 2. The date the client was reached by telephone and given the notification verbally.
- III. At the last vouchering appointment of the certification period, clinic staff should discuss the participant's future categorical eligibility status with the participant or guardian. This will assist the client to know whether or not they should reapply for certification. Recertification appointments should be noted on the WIC ID packet.

G.3. Missed Appointments

Policy

Pregnant women who miss their initial WIC certification appointments must be contacted in order to attempt to reschedule the certification appointment.

Procedure

- I. The Utah WIC Program uses an automated telephone dialing system to make appointment reminder calls and to notify all applicants and participants of missed appointments.
 - a. When an applicant or participant misses an appointment, clinic staff notes this in the computer system on the same day or the day following the missed appointment.
 - b. The automated phone system will then make a call to the participant. Calls will be made on the second business day following the date of the missed appointment.
- IV. Pregnant women who miss an initial certification appointment and cannot be reached by telephone must be mailed a Missed Appointment letter. This requirement also applies to any local agencies that choose not to use the automated phone system.
 - a. Document that the Missed Appointment letter was mailed on the Missed Appointment report, or in the participant's file.

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- b. Use the woman's address and telephone number documented in the computer or on the Application Log.
- V. When applicants to the program contact the clinic to reschedule a missed certification appointment the clinic should offer the applicant the next available certification appointment. The clinic is not required to meet processing standards on rescheduled appointments.
- VI. Once certified, participants should be encouraged to receive benefits on a continual basis. Clinics should strive to voucher ninety-five percent (95%) of their caseload each month. Reminding participants that they have missed their appointment is one way to increase the number of participants served in each clinic.
- VII. The computer system automatically terminates participants whose base dates are two months in the past or whose certification period is over.
- VIII. Participants who are late for appointments:
 - a. Participants may not be terminated for being late to an appointment. Participants who are late or continuously miss their appointments should be counseled concerning the importance of keeping appointments and of notifying the WIC clinic in advance if they cannot keep an appointment.
 - b. Local clinics may wish to form their own policy dealing with participants who are late for appointments. The policy must be sent into the state office for review.

G.4. Complaints

Policy

The State Agency must have procedures to document the handling of complaints by participants, parents, or caretakers of infant or child participants, proxies, vendors, and direct distribution contractors.

Procedure

- I. Complaints of Civil Rights must be handled in accordance with § 246.8(b). [In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. To file a complaint of discrimination, write U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue S.W., Washington, D.C. 20250-9410 or call (866) 632-9992 (voice) or (202) 260-1026 (local). TTY users can contact USDA

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through local relay or the Federal Relay at (800)877-8339 (TTY) or (866) 377-8642 (relay voice users). USDA is an equal opportunity provider and employer.] See Section L.11 for more information regarding Civil Rights policy.

- a. Although it is the policy of the USDA and FNS, as so stated above, to provide fair and equitable treatment to every employee and customer, there are specific laws and regulations that provide for the protected bases for each nutritional assistance program. For this reason, sexual orientation, marital or family status, parental status, and protected genetic information are not protected bases in The WIC program.
 - b. All complaints alleging discrimination on the basis of race, color, national origin, age, sex, or disability, either written or verbal, will be processed within the time frames established by Departmental regulations and agreements. All Civil Rights complaints will be forwarded to USDA within five (5) days. Verbal complaints are documented with as much detail as possible and forwarded to USDA. Anonymous complaints will be handled as any other complaints, to the extent feasible, based on available information.
- II. All complaints written or oral directed toward clinic or agency personnel, regarding potential or alleged participant, vendor, or clinic/agency violations, obtained by any method, needs to be initially documented on a **Complaint Log** and a **Complaint Documentation Form (WICNU)** or in the **Customer Service Log (VISION)**. This documentation needs to be completed so that appropriate investigative procedures, follow-up, and resolution can be examined if the participant/vendor requests an agency conference or a fair hearing.
 - III. If the complaint involves a vendor, then the complaint will be referred to the local clinic or agency vendor management representative to investigate in accordance with Section F (Vendor Management).
 - IV. If the complaint involves participant violations as defined in G.6, II, then the **WIC Participant Alleged Violation Report** and the **WIC Participant Violation Log** will be completed (**WICNU**) or the **Customer Service Log (VISION)**. If the complaint does not involve a participant violation as defined in G.6, II, then the participant will be counseled and the discussion documented in the comment section of the computer system.
 - V. When possible, obtain a written statement from the individual(s) making the complaint. Vendors may use the **Business Reply Card** to document participant complaints.

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G.5. Definitions

Policy

To apply definitions related to Program complaints, abuse, and violations.

Procedure

I. Definitions:

- a. **Complaint** means a formal or informal allegation or protest against a WIC vendor, participant, clinic, or agency that cannot be adequately or completely explained or resolved totally on the basis of simple clarification of WIC Program policy and procedures.
- b. **Participant violation** means any intentional action of a participant, parent, or caretaker of an infant or child participant, or proxy that violates Federal or State statutes, regulations, policies, or procedures governing the Program. Participant violations include intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain benefits; exchanging cash-value vouchers, food instruments or supplemental foods for cash, credit, non-food items, or unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument; threatening to harm or physically harming clinic, farmer or vendor staff; and dual participation (§246.2)
- c. **Proxy** means any person designated by a woman participant, or by a parent or caretaker of an infant or child participant, to obtain and transact food instruments/cash-value vouchers or to obtain supplemental food benefits on behalf of a participant. The proxy must be designated consistent with the State agency's procedures established pursuant to §246.12(r) (1). Parents or caretakers applying on behalf of child and infant participants are not proxies.
- d. **Dollar loss for participants:** The full value of benefits that were obtained that they were not entitled to.
- e. **Employee fraud and abuse:** The intentional conduct of a state, local or clinic employee which violates program regulations, policies or procedures, including but not limited to, misappropriating or altering food instruments/cash-value vouchers, entering false or misleading information in case records, or creating case records for fictitious participants. These violations will consider whether the employee personally benefited from the intentional conduct.

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G.6. WIC Participant Violations

Policy

Definitions, application, and corrective action

Procedures

I. General Requirements

- a. *Mandatory sanctions or other actions for participant violations.* The local agency must impose disqualifications, or take other actions in accordance with the procedures set forth in § 246.12(u), in response to participant violations including, but not limited to, the violations listed in the definition of *Participant violation* in § 246.2. Participant sanctions may include disqualification from the Program for a period of up to one year.

II. Participant violations include:

- a. Redeemed a WIC food instrument/cash-value voucher outside authorized dates or attempted transaction of food instruments/cash-value vouchers with unauthorized vendors.
- b. Altered the WIC food instrument/cash-value voucher in any way including intentionally using false signatures or proxy signatures.
- c. Exchanged a food instrument/cash-value voucher for unauthorized food items.
- d. Directed verbal abuse and/or threatening to harm or physically harming clinic or vendor staff.
- e. Redeemed WIC food instruments/cash-value vouchers that were reported lost/stolen with redemption of both the lost and replacement food instruments/cash-value vouchers.
- f. Exchanged a food instrument/cash-value voucher or supplemental foods for cash, credit, non-food items, including supplemental foods in excess of those listed on the participant's food instrument/cash-value voucher. Giving supplemental foods to anyone other than the individual(s) for which they were issued.
- g. Intentionally making false or misleading statements or intentionally misrepresented, concealed, or withheld facts to obtain benefits.

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- h. Participant received & redeemed food instruments/cash-value vouchers from two different clinics in the same month. The participant received food benefits from both the WIC Program and CSFP (Dual participation).
 - i. Assessment
 - j. Subsequent claim of any amount.
- III. Methods of Detecting Participant Violation:
 - a. Improper food instrument/cash-value voucher redemption procedures
 - b. Reports/complaints from vendors/participants and/or other individuals/agencies
 - c. Dual participation reports
 - d. Participant admits wrong doing/violation during WIC clinic visit, voucher issuance, and/or investigation of improper redemption procedures
- IV. All participant violation and corrective action is handled by the Local Agency staff using the following guidelines:
 - a. Once the local agency becomes aware of the alleged participant violation, clinic staff MUST mark the “Do not allow food benefits” check box in the Participant Violations screen (locking out food issuance) indicating that the participant must be counseled PRIOR to food issuance.

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PARTICIPANT VIOLATION AND CORRECTIVE ACTIONS:

(1) See exceptions to mandatory disqualification

(2) Repayment required if a quantitative value of the violation can be determined

(3) As part of the corrective action for all participants requiring repayment of benefits, the participant/proxy will be required to complete the interactive CD for WIC participants except those with dual participation. This will be documented in the comment section

PARTICIPANT VIOLATION	CORRECTIVE ACTION	CORRECTIVE ACTION
	FIRST OFFENSE	REPEATED OFFENSES (within a Certification period)
1) Redeemed a WIC food instrument/cash-value voucher outside authorized dates or attempted transaction of food instruments/cash-value vouchers with unauthorized vendors.	<u>WARNING</u> documented in the WIC Participant Alleged Violation Report (Required Counseling)	<u>SUSPENSION</u> of one (1) month of benefits (Required Counseling)
2) Altered the WIC food instrument/cash-value voucher in any way including intentionally using false signatures or proxy signatures	<u>WARNING</u> documented in the WIC Participant Alleged Violation Report (Required Counseling)	<u>SUSPENSION</u> of one (1) month of benefits (Required Counseling)
3) Exchanged a food instrument/cash-value voucher for unauthorized food items	<u>WARNING</u> documented in the WIC Participant Alleged Violation Report (Required Counseling)	<u>SUSPENSION</u> of one (1) month of benefits (Required Counseling)
4) Directed verbal abuse and/or threatening to harm or physically harming clinic or vendor staff.	<u>WARNING</u> documented in the WIC Participant Alleged Violation Report (Required Counseling)	<u>SUSPENSION</u> of one (1) month of benefits (Required Counseling)
5) Redeemed WIC food instruments/cash-value vouchers that were reported lost/stolen with redemption of both the lost and replacement food instruments/cash-value vouchers	<u>SUSPENSION</u> of one (1) month of benefits (Required Counseling) OR <u>repayment of benefits if the claim is <\$100 (if \$100 or more, see #9)</u> ⁽²⁾⁽³⁾	<u>SUSPENSION</u> of two (2) month of benefits (Required Counseling) OR <u>repayment of benefits if the claim is <\$100 (if \$100 or more, see #9)</u> ⁽²⁾⁽³⁾
6) Exchanged a food instrument/cash-value voucher or supplemental foods for cash, credit, non-food items, including supplemental foods in excess of those listed on the participant's food instrument/cash-value voucher. Giving supplemental foods to anyone other than the individual(s) for which they were issued.	<u>SUSPENSION</u> of one (1) month of benefits (Required Counseling) OR <u>repayment of benefits</u> ⁽²⁾⁽³⁾	<u>SUSPENSION</u> of two (2) month of benefits (Required Counseling) OR <u>repayment of benefits</u> ⁽²⁾⁽³⁾
7) Intentionally making false or misleading statements or intentionally misrepresented,	<u>SUSPENSION</u> of three (3) months of benefits and/or <u>TERMINATION</u> from the WIC Program if	<u>MANDATORY DISQUALIFICATION</u> of one (1) YEAR* based on second

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concealed, or withheld facts to obtain benefits.	determined to be over income and/or repayment of benefits ^{(2) (3)}	OR subsequent repayment of benefits ^{(1) (2) (3)}
8) Participant received & redeemed food instruments/cash-value vouchers from two different clinics in the same month. Participant received food benefits from both the WIC Program and CSFP (Dual participation)	<u>MANDATORY</u> <u>DISQUALIFICATION of one (1) YEAR* OR repayment of benefits</u> ^{(1) (2) (3)}	<u>MANDATORY</u> <u>DISQUALIFICATION of one (1) YEAR* OR repayment of benefits</u> ^{(1) (2) (3)}
9) Assessment of a claim of \$100 or more for any violation	<u>MANDATORY</u> <u>DISQUALIFICATION of one (1) YEAR* OR repayment of benefits:</u> ^{(1) (2) (3)}	<u>MANDATORY</u> <u>DISQUALIFICATION of one (1) YEAR* OR repayment of benefits</u> ^{(1) (2) (3)}
10) Subsequent claim of any amount.	<u>MANDATORY</u> <u>DISQUALIFICATION of one (1) YEAR* OR repayment of benefits:</u> ^{(1) (2) (3)}	<u>MANDATORY</u> <u>DISQUALIFICATION of one (1) YEAR* OR repayment of benefits</u> ^{(1) (2) (3)}

- a. Complete the appropriate information on the **WIC Participant Violation Log**.
- b. Documentation of the **WIC Participant Alleged Violation Report**:
 - i. The Local WIC Agency is not permitted to divulge where the complaint originated (for example: the State agency, another WIC client, a vendor, third party, etc.) The identity of every complainant shall be kept confidential except to the extent necessary to carry out the purposes of this part of the policies and procedures, including the conducting of any investigation, hearing, or judicial proceeding. (7CFR 246.12, (b)). The WIC client is simply informed that the clinic has received a complaint.
 - ii. In addition, the WIC Participant Alleged Violation Report cannot contain where the complaint originated. After the WIC client reviews the form, makes their statement, and signs the form, a copy is given to the client. The WIC client should not be given any additional forms regarding the documentation of the complaint. Any additional documentation forms that were generated because of the complaint should then be attached to the clinic's copy of the alleged violation form and filed.
 - iii. Select the appropriate boxes to be checked depending on the corrective action to be taken:

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FORM DOCUMENTATION BOXES	COMMENT
<ul style="list-style-type: none"> ▪ <i>Clinic Number & Name; Food instrument/cash-value voucher #: Name of Participant; Redeemed Amount; Participant ID Number; First Day to Use</i> 	<ul style="list-style-type: none"> ▪ Complete the information needed.
<ul style="list-style-type: none"> ▪ <i>Alleged Violation Categories</i> 	<ul style="list-style-type: none"> ▪ Place an "X" in the appropriate box or boxes regarding the alleged violation
<ul style="list-style-type: none"> ▪ <i>Recipient, Parent or Guardian's Voluntary Statement</i> 	<ul style="list-style-type: none"> ▪ A statement must appear in the participant/endorser's own handwriting. If this is not possible, then the staff member writing the comments MUST have a witness signature and read the statement back to the participant for any correction. The signature of the individual making the statement must be present along with a date.
<ul style="list-style-type: none"> ▪ <i>Clinic Statement & Action Taken</i> 	<ul style="list-style-type: none"> ▪ The clinic staff should document the incident completely beginning with a summary statement of the violation and then present the specific details of the alleged violation including at a minimum, dates; time(s); names of responsible individuals, families, or vendor(s); and specifics of the incident, how, when, where, etc.
<ul style="list-style-type: none"> ▪ <i>You are receiving a WARNING concerning WIC participant violation in accordance to the Rights and Responsibilities (Fair Hearings are not applicable to warnings as benefits are not being suspended)</i> 	<ul style="list-style-type: none"> ▪ This box is to be checked if the participant is only given a WARNING and is not being terminated, suspended or given a request for repayment of benefits on this occasion.
<ul style="list-style-type: none"> ▪ <i>Continual WIC Program violation may result in suspension of benefits &/or repayment of benefits or an increase in length of the suspension of benefits including a one (1) year mandatory disqualification for an assessment of a claim >\$100, assessment of a claim for dual participation & assessment of a second or</i> 	<ul style="list-style-type: none"> ▪ This box is to be checked when issuing a WARNING or a SUSPENSION of benefits and/or repayment of benefits.

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<p><i>subsequent claim of any amount.</i></p>	
<p>▪ You have been <i>DISQUALIFIED</i> from the WIC program for (length of time) Fair hearing offered for <i>SUSPENSION</i> or <i>DISQUALIFICATION</i> only.</p>	<p>▪ This box is to be checked when DISQUALIFYING a participant. The length of the time of DISQUALIFICATION must be indicated on the form. (This would include a suspension or disqualification as a result of a non-payment of a requested claim against a participant)</p>
<p>▪ This written document serves as the Participant's fifteen (15) day notification of <i>SUSPENSION</i> of benefits for this offense or any other reported/documented violation in accordance to the Rights and Responsibilities,</p>	<p>▪ This box is to be checked on all participant violations, both WARNINGS and SUSPENSIONS. If the clinic is suspending a participant on the first violation, then a 20 day prorated food package must be given that month as this is the first notification. (This would include a suspension or disqualification as a result of a non-payment of a requested claim against a participant)</p>
<p>▪ Participant must repay the Utah WIC Program for the benefits received in violation of the Rights and Responsibilities & Federal Register §246,12 in the amount of \$_____</p>	<p>• This box is to be checked if it has been determined that the WIC participant has received benefits in violation of WIC Program policies & procedures & the Federal Register including food benefits received in excess of those food on the food instrument and/or CVV. The amount of the food instrument(s) or cash-value voucher(s) that were improperly exchanged and/or redeemed in the alleged violation(s) will need to be determined. The amount of all the food instruments/cash-value vouchers redeemed improperly is placed on the line.</p>
<p>▪ You may request a Fair Hearing/Agency Conference if you feel you have treated unfairly and your WIC benefits are being <i>SUSPENDED</i> or you are being <i>DISQUALIFIED</i> from the WIC program. A Fair hearing/agency conference form & appeal rights were given to you or appear on the back of this form.</p>	<p>▪ Check this box with all participant violation with suspensions, disqualifications, or repayment of benefits ONLY (not WARNINGS as no adverse action was taken). A Fair Hearing /Agency Conference form must be on the back of the copy of the WIC Participant Alleged Violation Report given to the participant.</p>
<p>▪ Clinic staff reviewed with you the Rights and Responsibilities agreement regarding violation of the Utah WIC Program & possible corrective actions.</p>	<p>▪ Check this box with all participant violation, either WARNINGS or SUSPENSIONS. The clinic personnel must review the specific alleged violation with the participant in regards to the Responsibilities Agreement.</p>

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<ul style="list-style-type: none">▪ <i>The clinic personnel completing the form must sign and date the form.</i>	<ul style="list-style-type: none">▪ The clinic personnel conducting the counseling & assignment of corrective action must date & sign the form.
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c. Distribution of the forms

- i. Original to participant
- ii. Copy to participant to be sent to the State Agency with payment
- iii. Copy to clinic's Participant Violations file
- iv. Copy to be mailed by the clinic to the State WIC Office, Budget Coordinator

V. Corrective Action

- a. Any violation and subsequent corrective actions can only be based on the food instruments/cash-value vouchers involved in the violation as defined in Section G. Another member of the family cannot be held accountable or have action taken against them if their food instruments/cash-value vouchers were not involved in the violation(s).
- b. Participant Contact
 - i. If the WIC participant is to be given a warning in accordance with the required corrective action, the participant should be contacted by phone (or sent a delivery confirmation letter to contact the clinic if no phone) within fifteen (15) days of the notification of the alleged violation and discussed with the WIC participant only. **The WIC Participant Alleged Violation Form** will be completed during the phone conversation and left in the chart or clinic violation file for the participant's signature at the next appointment.
 - ii. If the WIC participant has already been given a warning or if the corrective action requires a suspension or repayment of benefits, the participant should be contacted by phone, (or by letter if no phone), within fifteen (15) days of the notification of the alleged violation and scheduled for a counseling session regarding discussion and corrective action within sixty (60) days of the clinic notification of the alleged violation. The participant should be told that the meeting concerns an alleged violation and to bring their ID packet and all unused food instruments/cash-value vouchers with them to the

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counseling appointment, details will be discussed at the visit. If the participant does not make the appointment, the schedule screen and the comment screen will be documented and another appointment scheduled within the next thirty (30) days. If the client is scheduled for a clinic appointment within fifteen days of the notification of the alleged violation, no phone call or letter is necessary unless the appointment is missed.

- iii. Corrective action can be assessed in the following certification period if the WIC participant was not counseled or corrective action taken during the certification period of the alleged violation.
 - iv. All attempted contacts with the participant, phone calls or delivery confirmation letter, should be documented in the Comment Section. If the clinic receives a delivery confirmation letter return receipt from the delivery or non-delivery of the notification that documentation should be kept in the participant's file.
- c. **Mandatory Disqualification**
- i. Except as provided in the Federal Register/Vol. 65, No. 251/§ 246.12/paragraphs (u)(2)(ii) and (u)(2)(iii), whenever the local agency assesses a claim of \$100 or more, assesses a claim for dual participation, or assess a second or subsequent claim of any amount, the local agency must disqualify the participant for one year.
 - ii. **Referral to law enforcement authorities.** When appropriate, the State or local agency must refer participants who violate program requirements to Federal, State, or local authorities for prosecution under applicable statutes. If the local agency becomes aware of any illegal activity when investigating a complaint or when dealing with participant violation, the local agency will contact their department attorney.
 - iii. **Terminating a mandatory disqualification.** The local agency may permit a participant to reapply for the Program before the end of a mandatory disqualification period if full restitution is made or a repayment schedule is agreed upon between the State Agency and the WIC participant or, in the case of a participant who is an infant, child, or under age eighteen (18), the State or local agency approves the designation of a proxy
 - iv. **Exceptions to mandatory disqualification.** The local agency may decide not to impose a mandatory disqualification if, within thirty (30) days of receipt of the letter requesting payment, full restitution is made

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or a repayment schedule is agreed on between the State Agency and the WIC Participant or, in the case of a participant who is an infant, child, or under age eighteen (18), the local agency approves the designation of a proxy.

- c. **Suspension of Program Benefits not requiring a mandatory disqualification** - A participant may receive a WARNING or have WIC Program benefits suspended for a period of one (1) to three (3) months in accordance with the Corrective Actions.

- i. If the participant's benefits are being suspended in accordance with the Corrective Actions, indicate the reason(s) for the suspension of benefits, including the length of the disqualification.
- ii. If the local agency cannot establish a specific claim against the participant, but can identify a violation, then the violation will be considered a first or subsequent offense, but cannot be considered a violation in which a claim is established.

- VI. **Continuation of Program Benefits** - the participant shall be allowed to continue in the Program if the local agency determines that :

- a. In the case of a participant who is an infant, child, or under age eighteen (18), the local agency approves the designation of a proxy and documents this designation on the **WIC Participant Alleged Violation Report**.

- VII. **Time frame for Repeated Offenses**

- a. With the exception of a mandatory disqualification, the timeframe that the first offense is counted toward a subsequent or second offense or any repeated violations will be within a certification period of the participant. The participant must be counseled regarding the first offense before an additional corrective action can be assigned for a repeated offense.
- b. At the time the local agency notifies a participant of a suspension/ disqualification, the local agency must advise the participant of the procedures to follow to obtain a fair hearing pursuant to § 246.9. Prior to disqualification, the participant must be given fifteen (15) days notice of the action to be taken against them. The **WIC Participant Alleged Violation Report form** will serve as the notice if given fifteen (15) days prior to action taken.

- VIII. Use the termination code for participant violation under the following situations (a self-termination code should not be used):

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- a. failure to reimburse the Utah WIC program within thirty (30) days or as arranged;
- b. suspension of benefits of any length for the participant violation

IX. Claims against participants

- a. If the local agency determines that program benefits have been obtained improperly as defined under participant violations, the local agency must establish a claim against the participant for the full value of such benefits.
- b. For all claims, the local agency must issue a demand letter requiring repayment of benefits (Repayment of Benefits letter). If full restitution is not made to the State agency, or a repayment schedule is not agreed with the State WIC Office, or the first scheduled payment is not received within thirty (30) days of receipt date of the Repayment of Benefits letter, corrective action must be taken by the local agency in accordance to program violation procedures.
- c. The WIC client is not permitted to pay the claim after the thirty (30) days has expired. The State agency may take additional collection actions until restitution is made or a repayment schedule is agreed on, unless the State agency determines that further collection actions would not be cost-effective.
- d. Issuing the Repayment of Benefits letter requesting payment will be considered the minimum in establishing a claim or collection.
- e. Procedures
 - i. At the time the local agency issues the demand letter (Repayment of Benefits letter), the local agency must advise the participant of the procedures to follow to obtain a fair hearing pursuant to §246.9 and that failure to pay the claim may result in suspension of benefits or disqualification. In addition to establishing a claim, the local agency must determine whether disqualification is required by §246.12(u) (2) or a suspension is given.
 - (a) Except as provided in paragraphs (b) and (c) below, whenever the State/local agency assesses a claim of \$100 or more, assesses a claim for dual participation, or assess a second or subsequent claim of any amount, the State/local agency must disqualify the participant for one year.

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- (b) The State/local agency may decide not to impose a mandatory disqualification if, within 30 days of receipt of the letter demanding repayment, full restitution is made or a repayment schedule is agreed on, or, in the case of a participant who is an infant, child, or under age 18, the State or local agency approves the designation of a proxy.
 - (c) The State/local agency may permit a participant to reapply for the Program before the end of a mandatory disqualification period if full restitution is made or a repayment schedule is agreed upon or, in the case of a participant who is an infant, child, or under age 18, the State or local agency approves the designation of a proxy.
 - (d) Except as provided in paragraphs (e) and (f) below, whenever the State/local agency assesses a claim of less than \$100, the State/local agency must suspend all benefits for thirty (30) days.
 - (e) The State/local agency may decide not to impose a suspension if, within 30 days of receipt of the letter demanding repayment, full restitution is made or a repayment schedule is agreed on, or, in the case of a participant who is an infant, child, or under age 18, the State or local agency approves the designation of a proxy.
 - (f) The State/local agency may permit a participant to continue before the end of thirty (30) days if full restitution is made or, in the case of a participant who is an infant, child, or under age 18, the State or local agency approves the designation of a proxy.
- ii. The Repayment of Benefits letter will be on State letterhead with an original and four (4) copies. One copy will be kept in the Participant Violations file and documented that it was given on the Participant violations log. One copy will be sent to the State WIC agency, and two (2) copies will be given to the participant.
- iii. The WIC client will be instructed to send one copy of the Repayment of Benefits letter along with the payment requested to the State WIC agency. If the WIC client wishes to establish a repayment schedule, then the WIC client must contact the State WIC Office prior to the end of the thirty (30) day repayment period. The local agency staff will not perform any transaction with the participant, pay the claim for the participant in whole or in part, nor collect any repayment of benefits at the local clinic.

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- iv. The Repayment of Benefits letter will be on State letterhead with an original and four (4) copies. One copy will be kept in the Participant Violations file and documented that it was given on the Participant violations log. One copy will be sent to the State WIC agency, and two (2) copies will be given to the participant.
- v. The WIC client will be instructed to send one copy of the Repayment of Benefits letter along with the payment requested to the State WIC agency. If the WIC client wishes to establish a repayment schedule, then the WIC client must contact the State WIC Office prior to the end of the thirty (30) day repayment period. The local agency staff will not perform any transaction with the participant, pay the claim for the participant in whole or in part, nor collect any repayment of benefits at the local clinic.
- vi. The clinic will place a priority 1 statement in the Comment Screen (WICNU System) indicating that a repayment of benefits claim has been established against the participant and the length of suspension or disqualification if the repayment is not received by the State agency.
- vii. Any violation and subsequent corrective actions can only be based on the food instruments or the cash-value vouchers involved in the violation. Another member of the family cannot be held accountable or have action taken against them if their food instrument or cash- value vouchers were not involved in the violations.
- viii. Before WIC benefits can be issued, the clinic must have received an email confirmation that a payment has been received. If no payment has been received by (30) days of the repayment notification, no benefits can be issued. The WIC client who is issued a repayment of benefits letter can only receive thirty days of benefits until repayment has been received. The WIC client cannot setup a repayment of benefits schedule after the thirty (30) days has expired. The WIC client should be instructed to contact the State WIC Office directly regarding whether a payment has been received.
- ix. The WIC client who is issued a repayment of benefits letter can only receive thirty (30) days of benefits until repayment has been received. If the client has setup a repayment of benefits schedule on a monthly basis, the WIC client can only received one month of benefits provided that month of scheduled payment has been received . If additional months of benefits have already been issued to the client, then the clinic must request the WIC client to return the additional benefits greater than thirty (30) days from the date the repayment of benefits letter was issued.

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- x. Complete the **WIC Participant Violations Log** by indicating the corrective action taken and the requested amount of the established claim.
 - xi. The State agency must document the disposition of all participant claims.
- e. **Procedures for calculation of claims**
- i. Determine how long the inappropriate benefits were issued.
 - ii. Determine the WIC food instrument/cash-value voucher number(s) redeemed and
 - iii. Calculate the total dollar amount of food redemption for the length of time involved. The Help Desk can provide this redemption dollar information if you have determined the food instrument/cash-value voucher numbers involved.
 - iv. In the case of lost food instruments/cash-value vouchers that were redeemed, the amount of claim is based on the replacement food instruments/cash-value vouchers that were redeemed when the originally food instruments/cash-value vouchers have also been redeemed.
- f. Document all required information on the WIC Participant Alleged Violations Report. This information should include:
- i. All information required for the participant violation case
 - ii. That the participant was advised in writing of the violation and the repayment of benefits
 - iii. The participant has a right to a Fair Hearing, and that a fair hearing form was given
 - iv. The value of the improperly issued benefits, which are being considered for repayment
 - v. The participant was given fifteen (15) day notification of the adverse action
 - vi. The participant may be suspended or disqualified after the proper notification if payment is not received

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- g. The local agency will retain a copy Participant Alleged Violations Report along with a copy of the request for repayment of benefits letter after all information is obtained.

G.7. Collection and Maintaining Information on Cases of Participant and Clinic Fraud and Abuse

Policy

Procedure for the documentation, collection, and maintaining information on cases of participant and clinic abuse

Procedure

- I. Documentation of participant violations
 - a. As defined in G.5., Definitions, upon the receipt of an alleged participant violation, the clinic will document the *Participant Violation Log*. Ensure that the columns identified as "Warning Given," "Length of Suspension," and "Amount of claim Requested" are documented as this information will need to be sent to the State Agency at the end of the Fiscal Year.
- II. Documentation of clinic abuse.
 - c. As defined in G.5., definitions, if the State Agency or the Local Agency determines that fraud or abuse of the WIC Program occurred by a clinic employee, a letter describing the details of the alleged abuse, including how the employee benefited for the alleged abuse and the total dollar loss to the Program, will be sent to the State WIC office.
 - b. If the alleged abuse has occurred at the State Agency, the MCH Bureau director will investigate the allegations and provide writing documentation of the outcome including any dollar loss to the WIC Program.
- III. If there is credible evidence that fraud and abuse in excess of \$1,000 or other major criminal activity has occurred, the State agency should immediately advise the Mountain Plains Regional Office, which will refer the case to Office of Inspector General. The State agency should hold further investigative/administrative action in abeyance, including referral to State, local, or other Federal law enforcement authorities, pending Office of Inspector General's decision on whether it will assume the investigation.

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- a. This applies to fraud and abuse in any FNS programs involving State agencies, local agencies, contractors, vendors, farmers, participants, or anyone else. Thus, State agency stakeholders or cooperators such as contractors must immediately report known or suspected instances of significant fraud and abuse to the State agency, so that the State agency may expeditiously refer such matters to the Mountain Plains Regional Office. State agencies need to remind their stakeholders and cooperators of this responsibility.

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G.8. Dual Participation

Policy

Detection, documentation, and resolution of dual WIC participant application and participation in both the WIC and CSFP.

Procedures

- I. Dual WIC participation – Those participants identified within each local agency/clinic or between local/clinic agencies as being enrolled and receiving benefits on the WIC Program.
- II. Participation in both the WIC Program and CSFP – Those participants identified within the local agency/clinic and participating in CSFP as being enrolled and receiving benefits in both programs
- III. The State agency and the local agency shall be responsible for the following:
 - a. With local agency computerization of food instrument and cash-value voucher issuance, possible Dual Participation is reported to the local agency at each beginning of day.
 - b. The **Dual Participation Report** will list those participants suspected of dual Program application. Local agencies are required to resolve each case and keep record of the investigation with pen and ink documentation on their **Dual participation Report**.
 - c. Participants found committing dual participation **MUST** be terminated from one of the clinics involved or the clinic must terminate one of records enrolled in the same clinic immediately (or both clinics if appropriate).
 - d. If identification of a WIC participant needs to be verified, clinic personnel must verify the identification at certification or food instrument/cash-value voucher issuance. For a child participant, a birth certificate, or other records that local agency personnel consider adequate, will be utilized to establish the identity of the participant.
 - f. Local WIC clinics must make pen and ink documentation on the **Dual Participation Report** noting the date they contacted any other local agency/clinics or the date they terminated the record from the same clinic, the name of the person contacted in the other clinic (if applicable), and the resolution. All beginning of day reports, which include the **Dual Participation Report**, should be bound and tagged by month and Federal Fiscal year.

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- g. If dual participation is within a local agency and it is due to twins (triplets, etc.) or duplicate records:
 - i. The clinic will make a brief pen and ink notation regarding the apparent problem and resolution (for example: "twins") with the date of resolution. Make any appropriate changes to the participant data fields if needed. Terminate the duplicate record if appropriate with the designated dual participation code. The supervisor or designated clinic staff person will then resolve the dual participation by entering an 'R' in the action field.
 - ii. In the case of duplicate records, the clinic needs to state whether food instruments/cash-value vouchers have been issued and redeemed to both records for the same issuance month.
- h. If dual participation is between two local agencies/clinics then follow these procedures:
 - i. Contact the other clinic site to compare information and determine if the individuals are really the same WIC participant.
 - ii. If the individual is NOT the same participant, then both clinics will document a minimal pen and ink notation on the **Dual participation Report** that this is not the same participant. The clinic will resolve the dual by entering an 'R' in the action field.
 - iii. If the individuals are the same participant, then an agreement must be made between clinics as to which clinic will keep the participant active and which clinic will terminate the participant. The clinic creating the dual (receiving the Dual Participation Report) will need to make appropriate pen and ink notations on the **Dual Participation Report** indicating who was contacted, name of clinic staff, how the dual participation will be resolved, which clinic will terminate the client and the date of resolution. The clinic needs to state whether food instruments/cash-value vouchers have been issued and redeemed from both clinics for the same issuance month. After completing the investigation and documentation, the supervisor or designated clinic staff person of the clinic with the dual will document the resolution by entering an 'R' in the action field. The other clinic involved in the potential dual (receiving no Dual Participation Report), will need to make any appropriate documentation in the participant's comment screen.
 - iv. The determination must be made if the participant was issued and redeemed food instruments/cash-value vouchers for the same

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month(s). If they have, an amount will be determined from the redemption of these food instruments/cash-value vouchers and the WIC participant will be assessed a claim. Documented dual participation by the participant is a mandatory one (1) year disqualification.

- v. Additional corrective action should be enacted according to the participant violation procedures.
 - vi. Action taken against a participant must be documented on the **WIC Participant Alleged Violations Report**.
 - vii. The State Agency will monitor the local agency's documentation to these dual participation procedures and repayment of benefits.
- IV. In areas where the local agency serves a WIC population or operates a clinic site on or near a state border, the same as, or in proximity to another Indian, CSFP or state agency, the Utah WIC Program will enter into a Memorandum of Agreement with that agency for the detection and prevention of dual participation.
- a. Immediate disqualification from one of the State Agency programs or clinics will be implemented for participants found in violation due to dual participation. Where deliberate misrepresentation is involved, the participant may be disqualified from participating in both State Agency programs or clinic as specified in § 216.12(k) (2).
- V. The local agency must take follow-up action within 60 days of detecting instances of suspected dual participation

G.9. Agency Conference & Fair Hearings (Participants or Applicants)

Policy

Procedures for agency conferences and fair hearings for WIC applicants and participants

Procedure

I. Definitions

- a. *Availability of hearings:* The State agency shall provide a hearing procedure through which any individual may appeal a State or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's

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denial of participation or disqualification from the Program (7 CFR §246.9, (a)).

- b. *Request for hearing.* A request for a hearing is defined as any clear expression by the individual, the individual's parent, caretaker, or other representative, that he or she desires an opportunity to present its case to a higher authority. The State or local agency shall not limit or interfere with the individual's freedom to request a hearing. (7 CFR §246.9, (d)). Hearing requests by appellants can be made verbally, or in writing and delivered or sent to the State or local agency.
- c. When possible, an Agency Conference should be held to resolve the problem on the local level. An Agency Conference is defined as problem resolution discussion with the supervisory personnel of the clinic and the participant. The State Agency will have a representative present at all Agency Conferences. In participating in the Agency Conference, the participant agrees to try and resolve the problem. If the Agency Conference does not resolve the problem to the applicant's satisfaction, or if the applicant does not want an Agency Conference, she/he has the right to a Fair Hearing with the State Department of Health Hearing Officer.
- d. The participant must be informed that the Agency Conference is optional and that they have a right to a Fair Hearing instead.

II. Notification of Appeal Rights

- a. The local agency shall provide to all applicants and participants the statements on the appropriate forms that outline their right to an Agency Conference or Fair Hearing, including instructions for making the appeal. Applicants and participants shall also be informed of their right to be represented by a relative, friend, legal counsel, or other spokesperson.
- b. Copies of the Agency Conference/Fair Hearing form shall be given to each person at the time of denial of participation or termination, one given to the individual, the other retained in their chart.
- c. This notification is not to be given at the expiration of a certification period, unless their benefits may be jeopardized at the next certification visit (as would be the case when the Priority System was being used by a local agency).

V. The time limits concerning making an appeal are as follows:

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- a. Conference or Hearing must be requested within 60 days from the date of the notice of adverse action was mailed or given to the applicant by the local agency. (7 CFR § 246.9, (e)).
- b. The Conference should be held within two (2) weeks of the request. A Hearing must be held within three (3) weeks of receipt of request by the State Agency.
- c. Written notification of the decision made in the Conference must be made to the appellant by registered mail within fifteen (15) days; in the case of a Hearing, notification must be made within forty-five (45) days.
- d. If the appellant is not satisfied with the Conference decision, she/he may request a Hearing; this request must be made within sixty (60) days from the effective date of the adverse action taken by the local agency.

VI. **Denial or Dismissal of Request (7 CFR §246.9, (f)).**

- a. The State and local agencies shall not deny or dismiss a request for a Hearing unless:
 - i. The request is not received within the sixty (60) day time limit set above.
 - ii. The request is withdrawn in writing by the appellant or a representative of the appellant.
 - iii. The appellant or representative fails, without good cause, to appear at the scheduled hearing; or
 - iv. The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to Program eligibility have changed in such a way as to justify a hearing.

V. **Continuation of Benefits**

- b. Participants who appeal the termination of benefits within the period of time provided as defined by this section must continue to receive Program benefits until the hearing official reaches a decision or the certification period expires, whichever occurs first. This does not apply to applicants denied benefits at initial certification, participants whose certification period has expired or participants who become categorically ineligible for benefits. Applicants who are denied benefits at initial certification, or participants who become categorically ineligible during a certification period (or whose certification period expires), may appeal the denial or

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termination, but must not receive benefits while awaiting the hearing (7 CFR §246.9, (g)).

VI. Uniform Rules of Procedures

a. Agency Conferences Procedures:

- i. State and local agencies shall process each request for a hearing under uniform rules of procedure and shall make these rules of procedure available for public inspection and copying. At a minimum such rules shall include: The time limits for requesting and conducting a hearing; all advance notice requirements; the rules of conduct at the hearing; and the rights and responsibilities of the appellant. These procedures shall not be unduly complex or legalistic. (7 CFR §246.9, (h)).
- ii. The Conference/Hearing shall be conducted by an impartial official who has no personal stake or involvement in the decision, and who was not directly involved in the initial determination of the action being contested. The hearing official shall: (7 CFR § 246.9, (i)).
 - (a) Administer oaths or affirmations if required by the State;
 - (b) Ensure that all relevant issues are considered;
 - (c) Request, receive and make part of the hearing record all evidence determined necessary to decide the issues being raised
 - (d) Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing;
 - (e) Order, where relevant and necessary, an independent medical assessment or professional evaluation from a source mutually satisfactory to the appellant and the agency; and
 - (f) Render a hearing decision that will resolve the dispute.
- iii. The hearing official shall mail a notice of the hearing, which includes an explanation of the procedure and the date, time, and place and reason for the Conference to the appellant and the appellant's representative. The Agency Conference will be scheduled within two (2) weeks of the date of request, unless both parties agree to an earlier date. The Hearing shall be accessible to the appellant and shall be held within three weeks from the date the State Agency received the request for a hearing. The State or local agency shall provide the

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appellant with a minimum of ten (10) days advance written notice of the time and place of the hearing and shall enclose an explanation of the hearing procedure within the notice.

- iv. Local agency staff that has knowledge of the dispute should be in attendance as well as legal counsel for the agency if the agency desires. The local agency shall have the opportunity to present oral and documentary evidence and to examine, question, or refute any testimony or other evidence, including the opportunity to confront and cross-examine witnesses.
- v. The agency representative shall conduct the Conference without unduly complex or legalistic procedures, taking into consideration the appellant's background and education.
- vi. The hearing official will also provide the appellant or representative an opportunity to: (7 CFR §246.9, (j)).
 - (a) Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal;
 - (b) Be assisted or represented by an attorney or other persons;
 - (c) Bring witnesses;
 - (d) Advance arguments without undue interference;
 - (e) Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses; and
 - (f) Submit evidence to establish all pertinent facts and circumstances in the case.
- vii. Decisions of the hearing official will be factually based on the hearing record. The verbatim transcript or recording of testimony and exhibits or official report containing the substance of what transpired at the hearing, together with all papers and requests filed in the proceeding shall constitute the exclusive record for the final decision by the hearing official. This record shall be retained for four (4) years. This record shall also be available for copying and inspection, to the appellant or representative at any reasonable time (7 CFR §246.9, (k)).
- viii. A decision by the hearing official shall be binding on the local agency and should summarize the facts of the case, specify the reasons for

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the decision, and identify the supporting evidence and the pertinent regulations or policy. The decision shall become a part of the record.

- ix. Within forty-five (45) days of the receipt of the request for hearing, the appellant of representative shall be notified in writing of the decision and the reasons for the decision identifying the supporting evidence, pertinent regulations or policies.
- x. If the decision is in the favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately. If the decision concerns disqualification and is in favor of the agency, as soon as administratively feasible, the local agency shall terminate any continued benefits, as decided by the hearing official.
- xi. The appellant may appeal a local hearing decision to the State Agency, provided that the request for appeal is made within fifteen (15) days of the notice of the hearing decision.
- xii. Repayment of Certain Benefits by WIC Recipients
 - (a) When a State or local agency/clinic pursues collection of a claim against an individual participant who has been improperly issued benefits, the person shall be advised in writing of the reason(s) for the claim, the value of the improperly issued benefits, which must be repaid, and of the right to a fair hearing.
 - (b) If the decision regarding repayment of benefits by the appellant is in favor of the agency, the State or local agency shall resume efforts to collect the claim, even during pendency of an appeal of a local level fair hearing decision to the State agency.
 - (c) If the decision being appealed concerns disqualification from the Program, the appellant shall not continue to receive benefits while an appeal to the State agency of a decision rendered on appeal at the local level is pending.
 - (d) The decision of a hearing official at the local level is binding on the local agency and the State agency unless it is appealed to the State level and overturned by the State hearing official.
 - (e) The appellant may appeal a local hearing decision to the State Agency, provided that the request for appeal is made within fifteen (15) days of the mailing date of the hearing decision notice.

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- (f) The State and local agency shall make all hearing records and decisions available for public inspection, and copying; however, the names and addresses of participants and other members of the public shall be kept confidential. (7 CFR §246.9, (k) (4)).

IX. Fair Hearing Procedures

- a. If the Agency Conference does not resolve the appellant's dispute to her/his satisfaction, or the participant wants a Fair Hearing immediately, the State Office should be notified verbally or the Fair Hearing Request form should be sent directly to the State WIC Office. A Fair Hearing will be scheduled within three (3) weeks from the date the request is received by the State Office.
- b. The Hearing examiner will mail a notice of the Hearing which includes an explanation of the Hearing procedure and the date, time, place and reason for the Hearing to the appellant, any authorized representative of the appellant and the local agency at least ten (10) days before the Hearing, unless both parties agree to an earlier date. (7 CFR §246.9, (j))
- c. The Hearing Examiner shall conduct the Hearing using the uniform rules of procedures outlined above for the Agency Conference.
- i. Decision
 - (a) An official report containing the substance of what transpired at the Hearing, together with the papers and requests filed in the proceedings shall constitute the exclusive record for the final decision by the Hearing official. This record shall also be available for copying and inspection, to the appellant or representative at any reasonable time.
 - (b) At the conclusion of the formal hearing, the hearing officer shall take the matter under advisement and shall submit to the executive director of DOH a proposed decision, based exclusively on evidence and other material introduced at the hearing.
 - (c) The proposed decision shall be in writing and shall contain findings of fact and conclusions of law.
 - (d) The executive director of DOH may adopt the proposed decision, or any portion of the decision, or he/she may reject the proposed decision, or any portion thereof, and make his own independent determination based upon the record; or, he/she may remand the matter to the hearing officer to take additional evidence. In the

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latter case, the hearing officer thereafter shall submit to the executive director of DOH a new proposed decision. The final determination of the executive director for DOH constitutes final administration action.

- (e) Within forty-five (45) days of the receipt of the request for a hearing, the appellant or representative shall be notified of the decision in writing, the reasons for the decision, and to the extent it is available to him/her, of his/her right to appeal to a Departmental hearing or judicial review.
- (f) If the decision is in the favor of the appellant and benefits were denied or discontinued, benefits shall begin immediately. If the decision concerns disqualification and is in favor of the agency, as soon as administratively feasible, the local agency shall terminate any continued benefits, as decided by the hearing official.

VII. **Rehearing:** All departmental hearing decisions shall be accessible to the public (subject to provisions of safeguarding confidential information). Time for Filing. Any petition for rehearing must be filed no later than within ten (10) days after receipt of notice of the executive director's final determination.

- a. **Contents of Petition.** A petition for rehearing shall set forth specifically the detail and particulars in which it is claimed the order is unlawful, unreasonable, or unfair. If the petition is based upon a claim that the hearing officer failed to consider certain evidence it shall include an abstract of that evidence. The petition may be based upon newly discovered evidence. When such ground is used, the petition shall be accompanied by an affidavit setting forth the nature and extent of such evidence, its relevancy to the issues involved, and a statement that the party could not with reasonable diligence have discovered the evidence prior to the hearing.
- b. **Action on Petition.** Upon the filing of a petition for rehearing, the hearing officer may set a time for hearing said petition or may summarily grant or deny the petition in whole.
- c. **Rehearings Limited.** If an order is made granting the petition for rehearing, it shall be limited to the matter specified in the order. Upon rehearing, the hearing officer may confirm the former judgment, reverse, change, or modify the same in any particular. Such order and decision shall have the same force and effect as the original order but shall not affect any right or the enforcement of any right arising out of or by virtue of the original order unless so ordered by the hearing officer.

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- d. Action on Petition. The hearing officer will act upon a petition for rehearing within thirty (30) days from the date of its filing. If no action is taken by the hearing officer within such time, it shall be deemed to be denied.
- e. Submission of a petition for rehearing will automatically stay an order until final resolution of the petition unless otherwise determined by the hearing officer.

VIII. Judicial Review

- a. Judicial review of a final determination of the executive director may be secured by the aggrieved party by filing a petition in the district court within thirty (30) days after receipt of notice of the executive director's final determination.
- b. The petition, which shall be served upon the executive director, shall state the grounds upon which review is sought. With his/her answer, the executive director shall certify and file with court all documents and papers and a transcript of all testimony taken in the matter, together with the recommended findings of fact and conclusions of law of the hearing officer, and the final determination of the executive director.
- c. If the final determination of the executive director is consistent with the findings of fact and conclusions of law recommended by the hearing officer, the court shall review the record and may alter the final determination only upon a finding that the final determination is capricious, or not supported by the evidence.
- d. If the final determination of the executive director is not consistent with the findings of fact and conclusion of law recommended by the hearing officer, the executive director shall prepare and file with the court at the time of filing the answer to the petition, findings of fact and conclusions of law to support the final determination of the executive director. The petitioner shall have fifteen (15) days after receipt of the executive director's findings of fact and conclusions of law to amend the petition for review. The court may affirm or amend the final determination of the executive director, or require further or additional testimony necessary to be taken, and issue an order based on its own findings of fact and conclusions of law.

IX. APPEALS OF VENDORS OR LOCAL AGENCIES

- a. Food vendors or local agencies which have been adversely affected by a State Agency decision may request an Agency Conference with the State WIC Office, or a Fair Hearing as specified above.

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- b. The uniform rules of procedures set forth above apply and will be followed.
- c. The State agency shall provide a hearing procedure whereby a food vendor or local agency adversely affected by a State or local agency action may appeal the action.
- d. The right of appeal shall be granted when a local agency's or a food vendor's application to participate is denied, or during the course of the contract or agreement when a local agency or vendor is disqualified or any other adverse action which affects participation is taken. Expiration of a contract or agreement with a food vendor or local agency shall not be subject to appeal.
- e. The adverse action affecting a participating local agency shall be postponed until a hearing decision is reached.
- f. The State agency may take adverse action against a vendor after the thirty (30) day advance notification period mandated by paragraph (2) (a) of this section has elapsed. In deciding whether or not to postpone adverse action until a hearing decision is rendered the State Agency shall consider whether participants would be unduly inconvenienced and may consider other relevant criteria, determined by the State agency.
- g. The State agency hearing procedure shall at a minimum provide the local agency or vendor with the following:
 - i. Written notification of the adverse action, the cause(s) for and the effective date of the action. Such notification shall be provided to participating food vendors not less than one month (30 days) in advance of the effective date of the action. In the case of the disqualification of local agencies, the State agency shall provide not less than sixty (60) days advance notice of pending action.
 - ii. The opportunity to appeal the adverse action within a time period specified by the State agency in its notification of adverse action.
 - iii. Adequate advance notice of thirty (30) days will be given as to the time and place of the hearing to provide all parties involved sufficient time to prepare for the hearing.
 - iv. The opportunity to present its case and at least one opportunity to reschedule the hearing date upon specific request.
 - v. The opportunity to confront and cross examines adverse witnesses.

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- (a) When WIC vendors are disqualified based on a Food Stamp Disqualification, the Food Stamp investigator will not appear at a State level hearing unless subpoenaed.
- vi. The opportunity to be represented by counsel, if desired.
- vii. The opportunity to review the cause record prior to the hearing.
- viii. An impartial decision maker, whose decision as to the validity of the State or local agency's action shall rest solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the Program. The basis for the decision shall be stated in writing although it need not amount to a full opinion or contain formal findings of fact and conclusions of law.
- ix. Written notification of the decision concerning the appeal, within sixty (60) days from the date of receipt of the request for a hearing by the State agency.
- h. Appealing an action does not relieve a local agency or a food vendor permitted to continue in the Program while its appeal is in process from the responsibility of continued compliance with the terms of any written agreement or contract with the State or local agency.
- i. If a State level decision is rendered against the local agency or food vendor and the appellant expresses an interest in pursuing higher review of the decision, the State agency shall explain any further State level review of the decision and any available State level rehearing process. If neither is available or both have been exhausted, the State agency shall explain the right to pursue judicial review of the decision.

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FAIR HEARING

If the clinic takes any adverse action against you, you have the right to ask for an informal meeting or a formal hearing. This action may include not being put on or being taken off of the program, or having to pay back the value of food improperly given to you.

You may wish to contact a local legal service office or other community program. They can help you decide if you should ask for a meeting or a hearing. You may be able to receive free legal aid. Ask your local WIC clinic where this may be obtained. You may bring an attorney or any other person with you to the meeting or hearing.

If you feel you are not being treated fairly, you may ask for a meeting with your local WIC Clinic Supervisor. You must ask for this meeting within sixty (60) days from the date of action. At this meeting, you may discuss any items about the WIC Program you do not agree with.

If the meeting with the local clinic does not resolve your complaint or you would like a formal hearing, you should contact the State WIC office. You may do this by phone, in writing, or in person. You must ask for the hearing within sixty (60) days of the date the action was taken against you.

If you are taken off of the program any time during your certification period you should appeal the action within fifteen (15) days. You will then receive vouchers until your hearing is resolved or your certification period ends, whichever occurs first.

Utah Department of Health
Division of Family Health & Preparedness
Utah WIC Program
288 North 1460 West PO Box 141013
Salt Lake City, Utah 84114-1013
(801) 538-6960 or 1-877-942-5437

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AUDIENCIAS IMPARCIALES

Si la clínica tomara alguna medida adversa en su contra, usted tiene el derecho de solicitar una reunión informal o una audiencia formal. Por medida adversa se puede entender el no ser considerada para el programa o ser retirada de el, o el tener que pagar por la comida que se le haya dado indebidamente.

Si lo desea puede ponerse en contacto con una oficina local de servicio legal u otro programa de la comunidad. Ellos pueden ayudarle a decidir si usted debe solicitar una reunión o una audiencia. Es posible que reciba asistencia legal gratis. Pregunte en la clínica local del WIC donde puede obtener dicho servicio. Puede pedir que la acompañe un abogado o cualquier otra persona a la reunión o a la audiencia.

Si considera que no se le esta tratando imparcialmente, puede pedir que se le permita reunirse con el supervisor de la clínica local del WIC. Debe solicitar dicha reunión dentro de los 60 días posteriores a la fecha de la acción. En esa reunión puede tratar cualquier aspecto del Programa WIC con el que no este de acuerdo.

Si el mencionado procedimiento no resuelve su problema o si quisiera que se le concediera una audiencia formal, debe ponerse en contacto con la Oficina del WIC del estado, lo cual puede hacer por teléfono, pos escrito, o en persona. Debe solicitar la audiencia dentro de los 60 días posteriores a la fecha en que se tomo la acción en su contra.

Si se le retirara del programa en cualquier momento durante su periodo de certificación debe apelar la acción dentro de los 15 días siguientes. Entonces recibirá vales hasta que se lleve a cabo su audiencia o hasta que termine su periodo de certificación, lo que quiera que ocurra primero.

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WIC VENDOR ADMINISTRATIVE REVIEW REQUEST FORM

If the State Agency takes any adverse action against you, you have the right to ask for an Administrative Review.

You may wish to contact a legal service office or obtain legal assistance. They can help you decide if you should ask for a meeting or a hearing. You may bring an attorney or any other person with you to the Administrative Review.

If you want an Administrative Review, please contact:

Utah Department of Health ■ Division of Family Health and Preparedness ■ Utah WIC Program
State Vendor Management Coordinator
PO Box 141013 ■ Salt Lake City, Utah 84114-1013
538-6960 or 1-877-942-5437

If you do ask for an Administrative Review, be aware that you have certain rights. These are:

1. The right to appeal the State's decision to sanction your store. You may make this request verbally or in writing. You must make this request within thirty (30) calendar days from the effective date of the sanction. Please contact the State WIC Agency at the following address and phone:
2. The Administrative Review will be held within three (3) weeks from the date of receipt of the request. At least ten (10) days advance notice will be given to the individual/vendor, specifying the time and place of the hearing. Appealing adverse action and its process does not relieve the vendor from responsibility of continuing compliance with their terms of the agreement with the Utah WIC Program.
3. The right to receive advance notice of the time and place of the Hearing.
4. The right to present your case. This includes the right to one opportunity to reschedule your hearing upon making a written request. This request must be received by the Hearing Officer before the originally scheduled Hearing.
5. The right to confront and cross-examine any witnesses. Where WIC vendors are disqualified based on a Food Stamp disqualification, the Food stamp investigator will not appear at a State level hearing unless subpoenaed.
6. The right to be represented by a lawyer, yourself, or anyone else that you choose.
7. The right to review any case record prior to the Hearing.
8. The right to an impartial decision maker.
9. The right to receive written notification of the decision on the appeal. You have the right to receive this decision within sixty (60) calendar days from the day you filed for the appeal.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability.

To file a complaint of discrimination, write U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue S.W., Washington, D.C. 20250-9410 or call (866) 632-9992 (voice) or (202) 260-1026 (local). TTY users can contact USDA through local relay or the Federal Relay at (800)877-8339 (TTY) or (866) 377-8642 (relay voice users). USDA is an equal opportunity provider and employer.

All vendors participating in the Utah WIC Program have the right to a Fair Hearing when any adverse action (i.e.: sanction points, denial of payment, disqualification or denial of application) could affect the vendor's participation in the WIC Program. Expiration of a contract or agreement with a food vendor is not subject to appeal. Requests for a Fair Hearing must be made within thirty (30) days from the date of the notice of adverse action. Direct all requests for a Fair Hearing to the State WIC Office.